



## **ADVISORY OPINION 08-XX**

Interpretation of T.C.A. §§ 3-6-305(b)(2), (b)(4) and (b)(7) with respect to whether state officials may attend a conference partially funded by employers of lobbyists, and accept free materials and promotional items provided by the employers of lobbyists in connection with the conference.

Requestor: Len Oliver, Tennessee Department of Transportation, Geotechnical Engineering Section.

### **QUESTIONS**

1. Does the Tennessee Comprehensive Governmental Ethics Reform Act (“Act”) prohibit state officials attending a conference of established and recognized government officials if this conference is partially funded by employers of lobbyists (“employers”)?

2. Does the Act prohibit state officials from taking free materials, product samples, and promotional items provided by employers at conference vendor booths?

### **ANSWERS**

1. No. The Act does not prohibit state officials from attending a conference partially funded by employers and receiving the benefit of any entertainment, food, refreshments, meals, beverages, amenities, health screenings, lodging, or admission tickets that may be provided in connection with the conference, so long as the conference is sponsored by an established and recognized organization of elected or appointed state government officials. Further, the Act allows officials to receive informational materials such as books, other written materials, and other forms of communication even if these items are provided by an employer.

2. No. State officials may take free materials, product samples, and promotional items as employers routinely supply these items to customers, suppliers, and potential customers at vendor booths.

### **FACTS**

Mr. Leonard Oliver of the Tennessee Department of Transportation’s (“TDOT”) Geotechnical Engineering Section (“Geotechnical Engineers”) asks the Tennessee Ethics Commission (“Commission”) whether the Geotechnical Engineers may allow employers to aid in the funding of the annual Southeastern Transportation Geotechnical Engineering Conference (“Conference”).<sup>1</sup> This funding assistance is to take the form of the payment of vendor fees and

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<sup>1</sup> The Commission does not have jurisdiction to address the question of whether the Conference may accept monies from vendors and sponsors. Tenn. Code Ann. § 3-6-301. As the Conference is a multi-state body comprised of state and federal employees, the

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the sponsorships of events, such as breakfasts.<sup>2</sup> Tennessee state employees will have the opportunity to partake in all conference activities, including the sponsored events.

The Conference is an annual meeting of engineers and geologists employed by state or federal government and involved in geotechnical engineering as it relates to transportation. Each year, a different state hosts the Conference. In 2008, the Conference will be hosted by the Geotechnical Engineers and the Conference will be held in Pigeon Forge, Tennessee.

The Conference's events are organized and decided upon by the Geotechnical Engineers as well as other state and federal employees. The Conference is funded by the payment of registration fees and vendor fees, in addition to the payment of sponsorships. Registration fees are paid by each state and federal employee or government entity.<sup>3</sup> Vendor fees are paid by private firms for the privilege of setting up advertising and information booths in part of the space rented for the Conference.<sup>4</sup> Sponsorship fees are paid for the privilege of sponsoring certain events at the conference, such as a breakfast. The sponsor's name appears on a sign board at the sponsored event as well as in the agenda. Payment of a vendor or sponsorship fee does not allow the payor any control over the Conference's events.

State and federal employees attending the conference will be able to obtain items in connection with the sponsored events at no extra cost. For example, state and federal employees attending a sponsored breakfast will receive the food without charge. Further, state and federal employees attending the conference will be able to obtain free materials, product samples, and promotional items at the vendor booths.

Some vendors and sponsors are employers. Thus the question is whether the Act would prohibit state officials who attend the conference from receiving items or benefits provided as a result of the contributions from employers.

### **ANALYSIS**

Officials in the executive branch of state government may not accept gifts from employers.<sup>5</sup> Tenn. Code Ann. § 3-6-301(19) defines an "official in the executive branch" to include "the governor, any member of the governor's staff, any member or employee of a state

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Commission is not the Conference's regulatory body. The Commission does, however, regulate the conduct of Tennessee state employees who attend the Conference.

<sup>2</sup> In his initial request, Mr. Oliver also asked whether an employer might act as banker for the Conference. Mr. Oliver has since withdrawn this portion of his request. The Conference has decided the American Institute of Professional Geologists, a professional organization which does not employ lobbyists, should act as banker.

<sup>3</sup> Mr. Oliver advises that the State of Tennessee ("State") has typically paid the Conference registration fee for state employees.

<sup>4</sup> Though Mr. Oliver does not ask the question, it is worth noting that persons manning the vendor booths at the Conference may be "lobbying." Tenn. Code Ann. § 3-6-301(15) defines lobbying as communication, "directly or indirectly, with any official in the legislative branch or executive branch for the purpose of influencing any legislative action or administrative action." If the persons manning the booths are being paid for their work, and their purpose is to influence officials to purchase the goods or services offered by the vendor and/ or sponsor, these persons would be lobbying and subject to the Act's requirements.

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regulatory commission, including, without limitation, directors of the Tennessee Regulatory Authority, or any member or employee of any executive department or agency or other state body in the executive branch.” TDOT is located within the executive branch. As such, TDOT employees are executive branch officials under the Act and subject to the Act’s prohibitions.

ATTENDING THE CONFERENCE (question 1)

Tenn. Code Ann. § 3-6-301(11) defines “gift” as “payment, honorarium, subscription, loan, advance, forbearance, rendering or deposit of money or services, unless consideration of equal or greater value is received.”

Tenn. Code Ann. § 3-6-305(b)(7)(B) states that the following items are not subject to the gift ban:

Entertainment, food, refreshments, meals, beverages, amenities, health screenings, lodging, or admission tickets that are provided in connection with, and are arranged or coordinated through the employees or designated agents of, a conference, if the conference is sponsored by an established and recognized organization of elected or appointed state government officials, staff of state government officials or both officials and staff, or any other established and recognized organization that is an umbrella organization for such officials, staff, or both officials and staff.

The Geotechnical Engineers are an established and recognized organization that is an umbrella organization for state government officials, specifically engineers and geologists within TDOT. The question then becomes what it means to “sponsor” the conference. “Sponsor” is not defined by the Act. However, *Webster’s II New College Dictionary* defines “sponsor” as, “one who assumes responsibility for a person or group during instruction, apprenticeship, or probation.”<sup>6</sup>

Despite their payment of vendor and sponsorship fees, the employers have no responsibility or control over the activities of the Conference. The Geotechnical Engineers, as well as other state and federal officials, have responsibility for and determine the activities, presentations, and instruction provided by the Conference. The Conference is thus sponsored by the Geotechnical Engineers, as well as other state and federal officials. The Conference meets the exception provided by subsection (b)(7)(B) and state employees may attend and be provided with any food, refreshments, meals, beverages, amenities, and admission tickets associated with the Conference even if the Conference is partially funded by employers. Subsection (b)(7)(B) does not except the informational materials such as conference books, presentation materials, and speeches presented to attendees at a conference, however.

For the informational materials customary at a conference, one must look to Tenn. Code Ann. § 3-6-305(b)(2). Subsection (b)(2) provides, “[i]nformational materials in the form of

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<sup>5</sup> Tenn. Code Ann. §§ 3-6-304(h)(employers prohibited from providing lodging to executive branch officials, among others); 3-6-305(a)(2)(officials in the executive branch, among others, prohibited from accepting gifts from lobbyists or employers).

<sup>6</sup> *Webster’s II New College Dictionary*, 1093 (3<sup>rd</sup> ed. 2005).

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books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication,” are not subject to the gift ban. Thus, an official can accept the informational items above from an employer at any time, including during a conference.

**FREE ITEMS PROVIDED BY SPONSORS AND VENDORS AT THE CONFERENCE**

TDOT employees may partake in “[e]ntertainment, food, refreshments, meals, beverages, amenities, health screenings, lodging, admission tickets” provided by the employers of lobbyists under Tenn. Code Ann. § 3-6-305(b)(7)(B) as long as state government officials retain sponsorship of the conference. The question then becomes whether TDOT employees may take the free materials and product samples provided by employers at vendor booths.<sup>7</sup>

Tenn. Code Ann. § 3-6-305(b)(4) provides the following are not subject to the gift ban:

Sample merchandise, promotional items, and appreciation tokens, if such merchandise, items and tokens are routinely given to customers, suppliers or potential customers or suppliers in the ordinary course of business.

As customers, suppliers, and potential customers are customarily given sample merchandise and promotional materials at vendor booths, the Commission finds these items to be provided in the ordinary course of business and thus excepted from the gift ban under subsection (b)(4) above. Officials attending the conference may take the free materials, sample merchandise, and promotional items provided at the vendor booths, even if these items are provided by an employer.

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Commissioners

Date: March 25, 2008

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<sup>7</sup> Again, the Commission cannot comment on the propriety of the Conference allowing vendors to set up the booths. The Commission can comment only on whether state employees may take the free items from employers the Conference allows to set up booths.